

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

David Dwight Smith, #245760

Petitioner,

v.

Collie Rushton, Warden; and Henry
McMaster, Attorney General for South
Carolina,

Respondents.

C/A No. 6:06-338-GRA-WMC

ORDER

This matter is before the Court for a review of the magistrate's Report and Recommendation filed on February 28, 2006, and made in accordance with 28 U.S.C. § 636(b)(1) and Local Rule 73.02(B)(2), D.S.C. Petitioner brought this suit pursuant to 28 U.S.C. § 2254. The magistrate recommends dismissing this petition without prejudice and without requiring Respondents to file a return.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final

determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Petitioner filed an objection on March 17, 2006.

The Petitioner does not state a specific objection to the magistrate's Report and Recommendation. In broad and general terms he merely states that he is making a federal claim concerning violations of his federal constitutional rights which took place before any South Carolina court proceedings. This objection lacks the specificity to trigger *de novo* review. Therefore this objection will not be addressed.

Further Petitioner also filed on March 17, 2006 a motion for judicial notice of adjudicative facts. This motion is identical to the Petitioner's objection to the magistrate's Report and Recommendation filed on the same day. This Court denies the motion.

After a review of the magistrate's Report and Recommendation, this Court

finds the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Petitioner's complaint be DISMISSED without prejudice and without requiring Respondents to file a return.

IT IS FURTHER ORDERED that Petitioner's motion for judicial notice of adjudicative facts be DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "G. Ross Anderson, Jr.", is positioned above a horizontal line.

G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

March 22, 2006.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.